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Legal Framework for Cross-Regional Networks: The Case of Services and Migration

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Recent literature has shed light on the economic potential of cross-border networks. These networks, consisting of expatriates and their acquaintances from abroad and at home, provide the basis for the creation of cross-border value added chains and therewith the means for turning brain drain into brain circulation. Both aspects are potentially valuable for economic growth in the developing world. Unilateral co-development policies operating through co-funding of expatriate business ventures, but also bilateral agreements liberalising circular migration for a limited set of persons testify to the increasing awareness of governments about the potential, which expatriate networks hold for economic growth in developing countries. Whereas such punctual efforts are valuable, viewed from a long term perspective, these top-down, government mandated Diaspora stimulation programs, will not replace, this paper argues, the market-driven liberalisation of infrastructure and other services in developing countries. Nor will they carry, in the case of circular labour migration, the political momentum to liberalise labour market admission for those non-nationals, who will eventually emerge as the future transnational entrepreneurs. It will take a combination of mode 4 and infrastructure services openings-cum regulation for countries at both sides of the spectrum to provide the basis and pre-condition for transnational business and entrepreneurial networks to emerge and translate into cross-border, value added production chains.

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Two key issues are of particular relevance in this context: (i) the services sector, especially in infrastructure, tends to suffer from inefficiencies, particularly in developing countries, and (ii) labour migration, a highly complex issue, still faces disproportionately rigid barriers despite well-documented global welfare gains. Both are hindrances for emerging markets to fully take advantage of the potential of these cross-border networks. Adapting the legal framework for enhancing the regulatory and institutional frameworks for services trade, especially in infrastructure services sectors (ISS) and labour migration could provide the incentives necessary for brain circulation and strengthen cross-border value added chains by lowering transaction costs.

This paper analyses the shortfalls of the global legal framework – the shallow status quo of GATS commitments in ISS and mode 4 particular – in relation to stimulating brain circulation and the creation of cross-border value added chains in emerging markets. It highlights the necessity of adapting the legal framework, both on the global and the regional level, to stimulate broader and wider market access in the four key ISS sectors (telecommunications, transport, professional and financial services) in developing countries, as domestic supply capacity, global competitiveness and economic diversification in ISS sectors are necessary for mobilising expatriate returns, both physical and virtual. The paper argues that industrialised, labour receiving countries need to offer mode 4 market access to wider categories of persons, especially to students, graduate trainees and young professionals from abroad. Furthermore, free trade in semi-finished products and mode 4 market access are crucial for the creation of cross-border value added chains across the developing world. Finally, the paper discusses on the basis of a case study on Jordan why the key features of trade agreements, which promote circular migration and the creation of cross-border value added chains, consist of trade liberalisation in services and liberal migration policies.

1. Introduction

Recent research has shed light on the positive effect on economic growth when young people, who study abroad, return to their home countries and use their network and know-how from abroad for the creation of regional value added chains (e.g. Saxenian 2001, Beine et al. 2003, Lowell 2001). The same holds true of non-formally trained workers, whose human and entrepreneurial capital is enhanced by their stay abroad (Piperno and Stocchiero 2006, Guarneri 2005) to the effect that these migrant workers become catalyst of transnational investment activities. Even without a physical return, expatriate networks have an indirect, more virtual 'return' effect, when, as Leblang (2009) described, the migrants abroad lower information costs and asymmetries for potential investors to the expatriate's home country. If successful, such expatriate entrepreneurial networks create employment opportunities, provide access to capital and intensify the participation of that country in cross-border trade and investment.

This effect is of particular interest for emerging markets otherwise lacking access to technology and capital, which are two key production factors underrepresented in emerging markets. More and more young people from emerging markets attain their postgraduate degrees from an internationally high-ranked university, preferably in a developed country. According to the 'brain drain' theory, these students tend to stay in the West to take advantage of their know-how and newly formed networks, which damages the economy of their home countries (Beine et al. 2003:2). If they decide to return home, however, their network and know-how are also of value for exploiting business opportunities: they will be of particular value in starting cross-border business ventures (Ibid.:5). The advancing of such cross-border business ideas stimulates the economy of the home country as well as of other countries in the region. Furthermore, it encourages ‘brain circulation’ and therewith helps to prevent the negative effects of brain drain.

As Rauch and Trindade (2002) have shown, expatriate migrant networks not only engage in entrepreneurship directly and thus contribute to employment creation in their countries of origin, but also play an important ‘informational’ role in encouraging foreign direct investment to their countries of origin. Drawing on this finding, Leblang (2009) empirically documents the findings by Saxenian (2001) and others that tertiary educated migrants, who themselves are involved in the investment process, will increase both portfolio and foreign direct investment, while less educated migrant networks will stimulate only the latter.

Governments have only recently started attempts to operationalise and aggrandise the scope and functioning of private-based initiatives and networks so as to stimulate broader employment creation. Tools used include tax incentives, reduction of remittances transfer costs, establishment of circular migration programmes for scientific, technical Diasporas and businessmen, as well as joint university chairs. Such government-led programmes will, however, not substitute for broader-based liberalisation of key services sectors and modes of supply, namely the cross-border, temporary movement of persons. Thus, the role and architecture of trade agreements is essential in the process of channelling and utilising expatriate networks information and know how.

The availability and quality of services is another key factor for the success of cross-border business networks (Langhammer 2006:4). For example, transportation, communication and finance are vitally important determinants of the success of business ideas involving cross-border networks. Any cross-border value added chain is inherently linked with these services, as they are required for co-ordinating the various locations involved in adding value to the end-product, or facilitate doing so. As opposed to the trade in goods, liberalising trade in services is not yet very advanced on a number of fronts despite it being generally agreed that liberalisation in the services sector would improve access to higher-quality services at more attractive prices, particularly in emerging markets (cf. Whalley 2003:50-1, Adlung 2007, cf. Theory of transaction costs). While the manufacture of goods in cross-border production chains has become a reality of the 21st century, their full potential cannot yet be tapped because service markets remain fragmented along national borders (cf. Australian Government 2004).

This paper takes a closer look at the role of the services sector, especially the infrastructure services sectors (ISS), which is key to attracting investments and physical return of expatriates (UNCTAD 2010a). Only a policy mix, consisting of liberalising ISS in developing countries while broadening the categories of persons whose temporary movement is being liberalised (mode 4) to students and graduate trainees, will foster the creation and evolution of cross-border value added chains. It discusses the impact of such value added chains on economic growth in emerging markets and establishes an argument for the regional liberalisation of services beyond the current status of GATS commitments and regulatory disciplines and institutional frameworks. Finally, this paper presents the outline of a legal framework for liberalising trade in services in a manner conducive to the creation of cross-border value added chains. This framework is discussed in a case study of Jordan, but draws on evidence from the policy models of Taiwan and China, as well as attempts made by France and Senegal to bolster brain circulation, mobilise expatriate returns and support the establishment of cross-border entrepreneurial ventures.

2. Cross-Border Value Added Chains, Transnational Business Networks and Economic Growth

While it is disputed to what extent emerging markets economically suffer from brain drain (Beine et al. 2008, Docquier 2006), it is generally agreed that expatriates from emerging markets, both the technical and scientific Diaspora but also non-formally trained migrant workers doted with entrepreneurial skills, represent a valuable – and largely untapped – potential for the development of their home countries (cf. Meyer 2001). During their stay abroad, expatriates build valuable networks with local businesses, industry associations, but also with decision-makers. An example in point are the Senegalese and Ghanaian seasonal agricultural workers in Northern Italian towns such as Modena, whose contacts with their employers and the local authorities led to the commercial establishment by their Italian employers of subsidiaries in Senegal region of Matam with the support of both the Italian local government and the Senegalese Ministry of Entrepreneurship (Piperno and Stocchiero 2006, Panizzon 2008).

When returning home, expatriates tend to bring scarce know how and networks back to their home countries, thereby improving linkages with markets abroad and potentially coming up with new business ideas: by returning home, foreign-educated people export first-hand knowledge to peripheral regions. This enables emerging markets to take part in the globalisation of the world market, and to put their respective competitive advantages to use by integrating in cross-border value added chains. Cross-regional entrepreneurs and their communities can facilitate the diffusion of technical and institutional know-how, provide access to potential customers and partners, and help overcome isolated economies' reputational and informational barriers (Saxenian 2006:104).

Among the main reasons for expatriates to stay in their host countries are the expectations to find better employment and business opportunities there (cf. Meyer 2001, Henderson 2002). Thus, a higher number of promising business opportunities at home and an improved ability to monetise them are expected to correlate positively with brain circulation and negatively with brain drain. While a number of issues restricting the occurrence and accessibility of business opportunities in developing countries and emerging markets, such as political instability and weak infrastructure, may only be cured through long-term structural reforms, improving the access to global markets and facilitating the creation of cross-border value-added chains may prove less tedious and faster to realise (Henderson 2002:55-6). According to economic theory, creating a more competitive environment through domestic deregulation and the liberalisation of international trade will tend to facilitate exploiting local competitive advantages and improve the development prospects for emerging markets in a globalised world (cf. Porter 1998, Devarajan and Rodrik 1989).

Among other effects, enhancing competition in developing countries and emerging markets is expected to facilitate the integration of returnees, but also the Diaspora in cross-border value added chains (Saxenian 2005:36). The concept of value added chains is particularly relevant in this context, as it illustrates how most goods and services are manufactured, assembled and marketed in today's globalised economy. Value added chains can be defined as:

> […] a full range of activities which are required to bring a product or service from conception, through the intermediary phases of production (involving a combination of physical transformation and the input of various producer services), delivery to final consumers, and final disposal after use (Kaplinsky 2000:8).

The increasing dynamism, competitiveness and geographical spread of global product markets have tended to dismember vertically integrated companies. Those trends have favoured decentralised production networks with various governance structures, but mostly consisting of numerous independent suppliers, service provides, assembly centres and marketing specialists (Sturgeon 2000).

In cross-border value added chains, each step or component of the process is located in the place offering the highest specific competitive advantage. Depending on the positioning of the end product on the world market, the selection of locations will typically take into account cost advantages, the availability of relevant know-how, or a combination of the two (Henderson et al. 2002:443). With their global networks and knowledge of other countries, foreign-educated expatriates returning to their home country to become entrepreneurs have an inherent advantage in finding the most competitive place for each step of the production process (cf. Lowell 2001:22) and are key facilitators of mode 1 and mode 3 cross-border services flows.

Technological progress and innovation in the services sector have rendered this decentralised mode of production economically viable in the first place and expatriate returns and brain circulation tend to increase the efficiency of such production. The global spread of telecommunication, transportation and other supporting services has drastically reduced the cost of sharing natural and human resources, as well as goods and services of any kind across the world. With technological progress, expatriates no longer need to physically return home to contribute to the home country development. Development-at-a-distance through mode 1 or mode 3 services supplies is a resource being increasingly tapped by host country development agencies and home country governments alike.

Governments have increasingly become aware of the expatriate potential as a development factor and have started experimenting with policies to assist, support and formalise Diaspora-led home country development, both in the context of immigration laws and bilateral migration agreements. This type of government-led, 'institutional' approaches to mobilising expatriate resources and enhancing their developmental dividends, such as remittance transfer cost reduction programmes, were coined by Martin and Abella (2009:432) as the 'easiest' transmission mechanism between migration and development that a host country can encourage. The French Agency for Development's online free comparison tool[1] for remittance transfer fees is a typical example. However, such 'institutional' approaches tend to be costly and to rely on domestic taxpayers, which inherently limits their scope.

Policy initiatives engaging the personal responsibility of the individual expatriate and mobilising private capital are more promising in terms of assuring the longevity and sustainability of entrepreneurial projects. For example, France's new co-development tax reduction programme for foreigners from developing countries in lawful stays in France, who invest in infrastructure projects of their home countries identified as sustainable by France, is a more innovative type of a government-led top-down policy initiative (Terrot 2009:19).

This paper will focus on the difficulty to create the pre-conditions, which need to be put in place for such bottom-up transnational networks to emerge in the first place. It finds that these challenges lay in the manifold barriers to cross-border trade in infrastructure services and labour migration. Cultural barriers, domestic worker coalitions and other ethnocentric forces pressing against the inflows of students, trainees and

[1] Agence Française de développement, International money transfers: free comparative platform now online, 19 November 2007: http://www.envoidargent.fr/.

workers from abroad are more difficult to be overcome than it is for governments to establish stimulation packages, such as on remittances transfers or tax reductions. However, such stimuli are but punctual efforts under the label of ‘development aid’, limited both in duration and in terms of eligibility of categories of expatriate nationals.

As posited by Saxenian (2006:104), a shared social context and language, which avert misunderstandings among partners, is vital for the success of long-distance collaborations in rapidly evolving markets. Therefore, despite the reduction of physical distances through new technologies and more open global markets, regions sharing a similar culture or common languages are most able to co-operate in cross-border value added chains:

> The rise of entrepreneurship-led growth suggests that the regional cluster may be replacing the national economy as the locus of economic growth (Saxenian 2006:108).

We also argue that transnational entrepreneurial networks are more efficient than multinational corporations in transferring to emerging markets the skills and know-how that they need for their economic development (cf. The experience of ASEAN, Dean and Wagnaraja 2007). The intricacy and complexity of trade in the globalisation era requires sophisticated forms of coordination, not merely with respect to logistics, but also in relation to the integration of components into the design of the final products and the quality standards with which this integration is achieved. Through their decentralised and demand-driven nature, cross-border value chains offer such sophisticated forms of coordination and integration (Kaplinsky 2000:12). They are also more flexible than multinational corporations and can link different business cultures and environments, thus facilitating the dispersion of know-how to emerging markets (Saxenian 2001:4).

Traditionally, development has been seen as building on the success of advanced economies, while peripheral regions remain followers. This view leaves little scope for the periphery to develop independent technological capabilities (Saxenian 2006:102):

> [Recent] changes in the world economy have undermined this core-periphery model. The increasing mobility of high-skilled workers and information, combined with the fragmentation of production in the information and technology sectors, provide unprecedented opportunities for formerly peripheral economies to benefit from decentralised growth based on entrepreneurship and experimentation (Saxenian 2006:103).

The new possibilities based on technical progress, and on tapping the knowledge and skills of returning expatriates, thus, offer a new and more independent way of economic development for emerging markets.

Because cross-border entrepreneurship is a relatively new phenomenon in most emerging markets, systemic data on the impact of the 'new argonauts' on economic growth is still very scarce. Nevertheless, 'their impacts are arguably as important as more easily measured multinational investments' (Saxenian 2006:101).

This section has shown that for emerging markets to take advantage of this new mode of economic development, it is crucial that expatriates have sufficiently bright business prospects in their home country to lure them home. Theory suggests that 'expatriates have mainly left because they did not have enough supportive networks (institutional, infra-structural, technical, educational, social, financial, aso.) to build, develop, express, use and to cash on their skills, at home'. They remain abroad, because they are precisely inserted into such supportive networks in their host countries: surveys have shown that the main reasons for expatriate entrepreneurs from emerging market to stay abroad are not linked to remuneration expectations, but rather to the availability of technical or support staff providing the specialised services required to successfully operate a business (Meyer 2001:9). The following section will take a closer look at how this link between services and the ability of emerging markets to integrate in cross-border value added chains.

3. Services as Catalysts for Cross-Border Value Added Chains

Until recently, studies of value added chains have tended to neglect services while focussing on the aspects related to goods and labour:

> The role of services in global commodity chains has been ignored for a long time. Also, they are often treated as constituting separate activities from other sectors of the economy, whereas many services in fact are intricately bound to other sectors of the economy (Clancy 1998:127).

Services are, in fact, fundamental to the functioning of value added chains. The more decentralised production chains get, the more transnational business networks emerge, and the more they rely on key infrastructure service sectors (ISS) to be liberalised, namely, telecommunication, transportation, financial and other services, such as energy and water. This insight has brought researchers and policymakers on the plan, who now mostly view the services sector as closely interwoven with trade in goods (cf. Adlung 2007).

Services play a particularly important role for value added chains extending across borders. While long distances render logistics and communication more complex, additional services are required to overcome the differences in local regulations and economic environments. As noted by Apte and Mason (1995:1250):

> The activities that should be considered for globalising are those that are traditionally labelled as services (e.g. financial, transportation, professional) as

well as those that constitute the service component of a manufacturing process (e.g. product and process design, inbound-outbound logistics, management information systems, finance, accounting, marketing).

Once these services are in place in the relevant region, cross-border value added chains stand much better chances for success than without a strong services sector. Clancy (1998:128) postulates that there is even a causal relationship between the globalisation of services sectors and growth in trade, investment and other transnational alliances.

Another aspect of importance for the availability and quality of services is the quality and reliability of infrastructure, including access to finance. Services and infrastructure are inherently linked with each other. For example, the pre-existence of an open landline phone wire network will dramatically reduce the sunk costs for incoming phone operators. Furthermore, it has been shown that liberalisation tends to reduce the cost and improves the quality of service provision (cf. Adlung 2007). Furthermore, liberalising trade in services is expected to improve the quality of services, and to promote economic growth in the long run (cf. Adlung 2007, Australian Government 2004, Chaudhuri and Karmakar 2008). In emerging markets, both the provision of essential infrastructure and the liberalisation of trade in services are expected to have a disproportionately strong positive impact on long run growth by indirectly promoting cross-border value added chains and brain circulation (UNCTAD 2010b).

As elaborated in the previous chapter, foreign-educated entrepreneurs' decisions to return to their home countries depend on political stability, economic openness and the availability of resources and services required for successful business prospects. Thus, it is important for emerging markets to foster a local skill base, good governance, as well as to provide an infrastructure that is supportive of entrepreneurship. Furthermore, institutional obstacles to entrepreneurship-led growth need to be removed (Saxenian 2006:110) and rigid labour laws reformed towards more entrepreneurial-friendly terms, even if core labour standards should be insisted upon, challenges to good governance are one of the main difficulties which many developing countries are facing on this issue. Governments face pressure by domestic coalitions of informal business that feel threatened by transnational, expatriate-led entrepreneurship. Under such pressure, especially developing country governments have indirectly discriminated against successful foreign or transnational businesses and have been treating the informal business sector more favourably for protectionist reasons (UNCTAD 2005:28-29; 2009:42, 91).[2]

There are a number of examples where the various obstacles to the development and growth of entrepreneurial ventures set up by expatriate returnees have been removed successfully. The following few paragraphs will look at the cases of Taiwan, China and India, which each have set up unilateral expatriate policies and the case of the France/Senegal and EU-African relations, as examples for bilateral/regional policy frameworks to foster transnational expatriate networks and entrepreneurship leading to cross-border added value chains.

In Taiwan, active government recruitment and rapid economic growth helped to turn brain drain into brain circulation, with many US-educated engineers returning home. The upgrading of Taiwan's technological infrastructure and capacities further spurred the reversal of the brain drain (Saxenian 2001:8). The elements of an attractive environment for expatriates include a well-developed skill base and technical infrastruc-

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[2] The informal economy in Africa is estimated to account for 42% of output in 1999–2000, although reaching as high as 60% in some countries; see UNCTAD *Economic Development in Africa Series*, 'Rethinking the Role of Foreign Direct Investment', 2005, pp. 28-29.

ture, an attractive physical environment for entrepreneurs, and a growing venture capital industry. Once in place, the transnational community accelerated the pace of innovation and industrial upgrading in Taiwan beyond the expectations of policymakers (Saxenian 2001:14-15).

In China, the local and central governments pursued two types of strategy in attempts to reverse the perceived brain drain: (i) they devoted substantial resources to promoting technical and business exchanges that involve overseas Chinese students, and (ii) they attempted to encourage students to come home with visits from representatives of ministries as well as of municipal governments. Furthermore, many local governments have established so-called ‘Returning Students Venture Parks’, which offer infrastructure and financial benefits, and address special needs of returnees, such as accelerating bureaucratic processes and high-quality schools for the returnees’ children. The so fostered transnational community particularly promoted a change in the region with formerly Taiwan-based companies moving specific parts of the process in their production chain to China (Saxenian 2001:23-25).

In the case of India, interviews with young Indian entrepreneurs who attempted to return to India in order to launch their own business showcase that the services sector is most crucial for young entrepreneurs:

> In India, expatriates complain about bureaucratic restrictions, corrupt and unresponsive officials, and an infrastructure that causes daily frustrations – from unreliable power supplies, water shortages, and backward and costly telecommunication facilities to dangerous and congested highways (Saxenian 2001:19).

Finally, in the case of France, we can distinguish between an early and a later phase of mobilising expatriates to return or to engage in circular movement. A first policy instrument of varied success is France's Foreign Ministry co-funding by up to 25% of the costs of the Diaspora-led projects to top up the efforts of migrants. France basically prioritises a credit line within the Framework Partnership Documents, the priority solidarity funds (PSF): the Framework Partnership Documents, which embed the PSF development aid programs, are signed with countries falling into the so-called priority solidarity zone encompassing former French colonies.

Co-funding has been an increasingly popular tool for stimulating migrant entrepreneurship and transnational networks, and has been tested in a number of different forms. In the case of the 'tres por uno' scheme, a number of Mexican States, and thus the country of origin rather than the destination country of migrants, earmarks funding for returning migrant's entrepreneurial projects in their home communities (COM 2006 735:22). Another example is the German-Turkish programme running since 1985, which operates a trilateral funding mechanism. Both Turkey and Germany co-equally pay an annual 11 million Euros into a joint fund, which matches and bears up to 50% of the returning migrant's investments projects' estimated capital needs (Böhning 1994:219-20). One advantage of co-funding is that it directly involves the Diaspora by circumvention of the government[3]. Another advantage of co-funding is that it can involve third-party financiers. For example, the French FSP co-development funding tool seeks matching funds by NGOs, international organisations, immigration associations, by local (source country) communities, the private sector and other gov-

[3] France-Diplomatie, available at : http://www.diplomatie.gouv.fr/en/country-files_156/senegal_233/france-and-senegal_5382/framework-partnership-document-france-senegal-2006-2010_8619.html.

ernments[4]. In the FSP Mali (2001) and the FSP Senegal (2005), 29% of the FSP Co-development funds are financed by migrants (Groupe Agence Française de Développement 2006). The main disadvantage of co-funding is that it is still mostly financed through development aid[5] and thus relies on government resources from tax revenue, rather than on private funding.

A second way of stimulating expatriate entrepreneurship is embedded in France's new pacts with migrant source countries, whereby France recruits the scientific and technical Diaspora elite for short-term expert missions in source countries, by creating joint university chairs. For instance, Articles 5, 6 and Annex II of France's pact on concerted migration management with Senegal, seeks the voluntary returns of Senegalese medical doctors and other health professionals based in France by offering research equipment or the prospect of joint university appointments[6]. In addition, the new pacts establish circular migration schemes for professional education and punctual expert missions by members of the Diaspora (de Haas xx:70-1). Temporary labour migration is so put to use for developing the human capital and increasing the skill-base of source countries.

A third type of government-led initiatives for stimulating expatriate entrepreneurship in their countries of origin is France's offer of tax breaks on 40% of the total sum which a migrant saves between 1 January 2009 and 31 December 2011. The funds

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[4] France-Diplomatie, available at : http://www.diplomatie.gouv.fr/fr/actions-france_830/aide-au-developpement_1060/politique-francaise_3024/instruments-aide_2639/fonds-solidarite-prioritaire-fsp_2640/index.html.

[5] In France, granted over renewable two-year periods by the French Parliament, in 2008 at a level of 30 million Euros. France, Diplomatie, availablet at : http://www.diplomatie.gouv.fr/fr/actions-france_830/aide-au-developpement_1060/politique-francaise_3024/instruments-aide_2639/fonds-solidarite-prioritaire-fsp_2640/index.html. See also: France, Ministry of Immigration, Integration, National Identity and Solidarity Development, available at: http://www.immigration.gouv.fr/spip.php?page=dossiers_det_dev&numrubrique=216&numarticle=1357.

[6] Sénat, Le Co-développement à l'essai, Travaux Parlementaires, Rapports d'information, http: www.senat.fr/rap.

destined for a project can go up to 25% of a migrants' global revenue with an annual ceiling of EUR 20'000 (Decree no. 2007-218:3074). For example, a first agreement has been signed with the union of Tunisian banks in 2008 to encourage these to make available the co-development savings account[7]. After the minimal savings period of three years, the holder of the bank booklet who applies for a credit to finance investments in countries with which France has signed a new pacts on concerted migration management, will obtain the bonus. The type of investments that trigger the premium will be listed in the pacts (Decree no. 2008-613:Art. R221-117). Unlike co-funding, the tax reductions and bonuses involve the expatriate more closely. For this type of bilateral policy to be operational, however, the financial institutions of the country of origin must either sign an agreement with the country of destination (such as Tunisian banks have done) or the country of origin must have offered some degree of market access to foreign financial services supply either through its mode 1 GATS commitments or have liberalised the establishment of commercial presence by foreign financial services institutions in its mode 3 GATS commitments.

The EU has also sought to replicate France's co-development plans, through the Rabat Action Plan. This plan encourages EU Member States to replicate the different types of agreements France had designed, such as those to 'allow young professionals to perfect their linguistic and professional skills, as well as to gain a paid work experience in another country,' and agreements defining measures to ensure the return of these migrants in their countries of origin at the end of their stay (Boswell 2003). In particular, the Rabat Action Plan aimed for student returns through a 'seduction' strategy, whereby transnational research networks should be improved and regional centres of excellence should be established in the South. Minister Hortefeux, while presenting

[7] France, Ministry of Immigration, Integration, National Identity and Solidarity Development, available at: http://immigration.gouv.fr/spip.php?page=dossiers_det_dev&numrubrique=216&numarticle=1360.

the Pact to the European Parliament in July 2008 quite cautiously, advocated a two-step process: only after presentation of 'steadfast results providing a safe ground on which to build initiatives supportive of circular migration and knowledge transfer' would the EC Council offer opportunities to workers and students willing to settle in Europe and take 'co-development action to enable migrants to take part in the development of their home countries' (European Pact on Immigration and Asylum 2005).

Senegal's government has been successful in identifying the Senegalese living abroad and mobilising these to take on some responsibility for the development of their local communities. The Investment Promotion and Major Works Agency (APIX) founded in 2000 and immediately placed under the auspices of the President of the Senegalese Republic has played an important role in attracting private capital, including, through its 'Entrepreneurship Diaspora', the investments of Senegalese abroad in government-initiated infrastructure projects[8]. APIX also invests loans made by foreign governments, such as those of France and Germany, to finance projects facilitating the economic reintegration of return migrants. At least three different ministries have similar information campaigns in place for attracting investments by Senegalese abroad to Senegal and compete against each other for attracting investments by various sorts of information campaigns.

As mentioned previously, predominantly lower-skilled Senegalese workers living in Northern Italian provinces have been instrumental in establishing joint ventures and partnerships between Italian food processing small and medium enterprises (SMEs) and Senegalese agricultural associations, namely in the dried tomato and biscuit industries. The 'Caravane of SMEs in Italy' initiated by the Ministry of Family, Womens'

[8] APIX, http://www.investinsenegal.com.

Entrepreneurship and Micro-finance of Senegal seeks to formalise those business contacts and professional networks established by the Senegalese Diaspora in Italy through public-private partnerships. The success of such public-private partnerships will, among other factors, be determined by matching government initiatives in the services sector: Parma is proposing to receive charter flights by Air Sénégal International and to make available freezer storage spaces for storing tomatoes flown in from Senegal to have them dried in Italy[9].

Contributing to Diaspora-led capacity building in technical, vocational training and professional education are various co-development initiatives at the international level, such as UNDP's Transfer of Knowledge through Expatriate Nationals (TOKTEN), which was launched for Senegal in 2002 with US$ 200,000[10]. In 2003, Italy and the International Organization for Migration (IOM) launched two migration for development programmes (MIDA) to promote links between hometown associations of immigrant local communities in Italy and local communities in Senegal, Ghana and Ethiopia and to facilitate entrepreneurship (and thus socioeconomic reintegration) of migrants returning home (Gallina 2007). The project was reformulated as MIDA Italy/Senegal/Ghana and excluded Ethiopia[11]. One of its key operational measures is a database, where Senegalese residing abroad can register their interest in contributing to the development of their country of origin and list their skills (de Haas 2006:29). The UN Digital Diaspora Network (launched in 2002 and in 2003 for Africa) as a partnership of different UN sub-organisations, including the UN Information and Communication Technologies (ICT) task force and the United Nations Development

[9] Senegal, Ministry of Small and Medium Enterprises, Womens' Entrepreneurship and Microfinance, Caravane des PME en Italie, June 2006.
[10] Transfer of Knowledge Through Expatriate Nationals, available at: http://www.diplomatie.gouv.sn/maeuase/tokten_note_presentation.htm.
[11] IOM, MIDA Ghana- Senegal 2006/2007 Migration for Development in Africa, available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/mida/MIDA_Gha_Sen_4_Website_EN.pdf.

Fund for Women (UNIFEM) and seeks to promote development and the achievement of the Millennium Development Goals through mobilising the resources of Diaspora[12].

'While policy-makers and planners can encourage cross-border connections, they cannot create or substitute for transnational entrepreneurs and their decentralised networks' (Saxenian 2006:110). As shown by this section, governments can, however, proactively assist private sector participation in cross-border value added chains. For example, they can assist producers to enter these chains or they can use policy instruments, such as liberalising trade to reposition the corporate sector within value chains. Between 1998 and 2008, international trade in services has grown by 8% annually, outpacing world GDP growth of 5% (Fukui and McDaniels 2010:2). This fact offers additional weight to the argument that liberalising services trade is not only beneficial as a vehicle for cross-border entrepreneurial networks to better access complementary assets, such as physical infrastructure, financial intermediation, human resource rents, and trade policy rents (Kaplinsky 2000:32). Nor is it only important because of its spill-over effects for goods production. It can rather be regarded as an end in itself, also for developing countries 'which are stand to gain from more services liberalisation' (Fukui and McDaniels 2010:2-4).

4. The GATS and Cross-Border Value Added Chains

The previous section has shown that the requirements for stimulating the emergence of cross-border value added chains are manifold: high quality infrastructure services – notably transportation, communication, finance and business services – good governance in terms of the regulatory and institutional frameworks relating to these, but also

[12] Kampala Declaration, Africa Launch of the Digital Diaspora Initiative 5–7 May 2003, Kampala Uganda, available at: http://www.unifem.org/campaigns/wsis/documents/KampalaDeclaration.pdf.

liberalising the cross-border flow for natural persons. Particularly the temporary movement of professionals, such as accountants, engineers and technicians, and other categories of service providing persons, is essential for fostering a functioning infrastructure (UNCTAD 2010b:16).

As Winters (2005:6) has argued, only if developing and least developed countries, are prepared to open more broadly and widely these services sectors to foreign competition, will it be possible to reverse brain drain by fostering an attractive business environment accompanied by sound infrastructure and good governance, which is the precondition to mobilise expatriates to return physically or to engage in FDI and other transnational entrepreneurial activities. One way to achieve this goal relatively fast, is through trade liberalisation in services, as this has proved to promote better quality services and allow for cross-border value added chains if liberalisation is regional or even global (Adlung 2007).

The most obvious legal tool to achieve this goal would be the GATS, being the major global treaty for trade liberalisation in services, with 153 member-economies:
Despite the official objective of promoting global trade liberalisation in services through the GATS, its impact has been limited since entering into force in 1995. Even though newer studies suggest that 50 percent reduction in barriers may lead to five times larger welfare gains than trade liberalisation in non services sectors (Robinson et al. 2002), trade in services is still far from being globally liberalised (cf. Hoekman 2000). The following sub-sections will take a closer look at each of the key infrastructure-related services sectors identified above and their evolution under the GATS progressive liberalisation.

4.1 Trade Liberalisation in Transportation Services

In the case of transportation services, the GATS *de facto* differentiates between air transport services, maritime transport services, rail transport services and road transport services, all of which are relevant in the case of cross-border value added chains. In the air transport sector, traffic rights or services directly related to the exercise of traffic rights are excluded from liberalisation (Annex on Air Transport Services). Consequently, no liberalisation is taking place in the air transport sector under the GATS (WTO Secretariat 2000:51-70).

The maritime transport sector is fairly liberalised compared to other services sectors. For example, bulk traffic 'faces no restrictions except in one or two countries' (WTO Secretariat 2000:430), while liner traffic is organised in conferences (cartels fixing prices and frequencies) and more and more increasingly large independent operators. Most of the traffic between countries is regulated by a framework of bilateral intergovernmental cargo-sharing agreements. Thus, even though maritime transport is integrated in the GATS, the GATS did not add much to the general liberalisation of the sector and there are still many issues remaining unsolved in the maritime services sector, particularly in relation to supporting services for maritime transport (Dee 2005, WTO Secretariat 2000, Roy et al. 2007).

In the case of rail transport services, the current grade of trade liberalisation needs to be analysed in the 4 modes of supply. Due to the historical background of rail transportation as being state-owned, there used to be little to no competition in the sector until very recently. Therefore:

> In the case of mode 1, for a long time international transport of passengers and freight only consisted of joining successive national segments of transport. No single entity was responsible for an international journey, the freight or the

> passenger being passed on from one monopolistic network to another (WTO Secretariat 2000:488).

Beside political hindrances, many technical obstacles hamper trade liberalisation in mode 1, such as incompatibilities in braking systems, height of railway wagons, type of electric power, and so on. With regard to mode 2, there is no restrictive legislation anywhere, and cross-border cooperation among railway companies works generally well. As long as railway companies remain state-owned, no trade is possible under mode 3. And because rail transport as a sector is only very little privatised, and particularly not in emerging markets, mode 3 is almost irrelevant today. Finally, as for mode 4, 'there is always a marginal flow of technicians and engineers, particularly to developing countries'. In conclusion, the level of commitments in rail transport services appears low as a consequence of national monopolies (Findlay 2008, WTO Secretariat 2000).

Road transportation is a fairly large sector in services, with many difficulties in classifying and defining the various services and confining them to the GATT (WTO Secretariat 2000:501). In the case of passenger transportation, urban public transportation is generally less liberalised than interurban. However, overall, liberalisation of passenger transportation services on the road seems low. As far as freight transportation is concerned, the degree of liberalisation depends on the type of goods transported: mail transportation, freight transportation by man- or animal-drawn vehicles and transportation of bulk liquids and gases are only to a small extent liberalised. Liberalisation is higher in the transportation services of the economically more significant goods, such as frozen goods, containers or furniture. However, the sector tends to be noticeably limited by the exclusion of cabotage from the commitments. Furthermore, derogations from MFN in cargo-sharing provisions are mainly bilateral or regional (WTO Secretariat 2000:521), 'they also remove a significant proportion of the traffic from the application of MFN and more generally from liberalisation'. While there have been several regional attempts to liberalise the road transport sector, such measures have not yet been targeted at the multilateral level (WTO Secretariat 2000, Findlay 2008).

4.2 Trade Liberalisation in Telecommunication Services

The telecommunication industry is in a process of rapid structural change while the national monopolies are suddenly facing competition and are being privatised in many countries. These changes in the sector are reflected in the GATS, particularly in the definition of the subsectors (GATS Services Sectoral Classification List MTN.GNS/W/120). The distinction between these subsectors has blurred already:

> […] with the adoption of new transmission technologies, the enhanced ability to integrate different technologies, and the advent of service suppliers who distinguish themselves not by specialising in particular telecom services, but rather by the market segments they seek to serve (WTO Secretariat 2000:534).

Because any list of classification of services in the telecommunication sector would quickly be out of date, categories of services have been developed during the negotiations to bridge this gap. In terms of the extent of market access, commitments differ between the different categories and the different modes of supply. Value-added services tend to be more liberalised than basic services. And industrialised countries generally have a more open telecommunication market than emerging countries (WTO Secretariat 2000:540).

Although particularly cross-border and consumption abroad will gain in importance in the future due to new technologies, commercial presence will remain essential for service suppliers. Consequently, emerging markets seem to follow a promising course of policy in the case of trade liberalisation in telecommunication services. However, even though the telecommunication sector is generally fairly liberalised, three types of market access limitations remain: (i) Limitations on the number of suppliers, (ii) restriction on type of legal entity, and (iii) limitations on the participation of foreign capital. These limitations particularly affect the commercial presence, and emerging markets are more likely to maintain such limitations and to shape them more strictly (Dee 2005, Cowhey and Aronson 2008, Adlung 2006).

4.3 Trade Liberalisation in Financial Services

Like telecommunication services, the financial services industry has seen revolutionary changes as a consequence of technological advances (WTO Secretariat 2000:338). Financial services are, thus, still evolving with every new technological innovation, and legal regulation is a difficult task. These technological advances render mode 1 trade more and more common, but many types of financial services still require commercial presence. Mode 1 and mode 3 supply are, thus, most interesting for liberalisation. In terms of the actual commitments under the GATS, mode 3 commitments are predominating, while mode 1 supply of financial services remains relatively restricted. Moreover, quite a few countries have taken MFN exemptions.

The financial sector is among the most heavily regulated sectors of all services sectors. This is partly because the sector is of imminent importance for the growth performance of an economy, but also because there is a need for government intervention in the sector in order to prevent market failure. Liberalisation under the GATS, thus, aims at ‘endors[ing] the need for regulatory policies to correct perceived market failures and systemic externalities in the financial sector […] while enhancing competition’ (WTO Secretariat 2000, Roy et al. 2007, Hoekman and Mattoo 2007). Especially emerging markets fear that liberalising in financial services will afford a competitive advantage to globally active MNCs and displace local banking and loan institutions. However, others have found that if developing countries were to liberalise trade in financial services, they could see gains of 300 billion USD by 2015 (Coalition of Services Industries, Report, 2006).

4.4 Trade Liberalisation in Professional Services

Professional services are infrequent, technical, or unique functions performed by contractors or consultants. They include legal services, architectural and engineering services, accountancy services, and computer and related services. While industrialised countries tend to open their market in all these different sub-sectors, developing countries remain reluctant to liberalisation of professional services trade and have, with a few exceptions, undergone fewer commitments under the GATS (WTO Secretariat 2000:32-3). The following gives a short overview of the general tendencies in trade liberalisation in professional services under the GATS.

The professional services sector is generally fairly open for foreign market access. This is particularly true for the sub-sectors of accountancy, architectural, and engineering services, followed by legal services. In the case of accountancy services, the greatest level of full market access is granted for mode 2. The sector is open to cross-border supply, too. However, only partial market access is granted in respect to modes 3 and 4.

Architectural and engineering services, accounting for the biggest share in liberalisation commitments under the GATS, have the greatest level of full market access in mode 3 and 4. Commercial presence and the presence of natural persons is crucial for these kinds of services. Thus, architectural and engineering services compare favourably with other services sectors in mode 3 and 4 liberalisation. However, while full market access in mode 3 is granted by relatively many members, labour migration is always limited by horizontal measures.

The extent of market access in the case of legal services varies from one specific kind of legal service to another. Generally, opening the legal services sector to trade is based on the principle of reciprocity, and, thus, often depending on preferential arrangements among member states. However, it appears that:

> […] in some specific commitments, the actual legal services regime is more liberal than the regime bound in the schedules and that some countries who have not scheduled specific commitments and have listed MFN exemptions maintain rather liberal legal services regimes (WTO Secretariat 2000:415-6).

Computer and related services have merged from a number of other sectors and are a fast-growing and lucrative market. The industry has developed in an open and competitive environment, which 'is often credited with having driven its rapid growth':

> As the industry has matured, however, some segments have shown a tendency to concentration in large companies. So while sector-specific regulation is nearly non-existent, competition authorities in some countries have had an influence on the development of the computer industry and related services (WTO Secretariat 2000:154).

There are, thus, concerns that the traditionally unregulated computer services sector could begin to face similar constraints as the telecommunications services sector (WTO Secretariat 2000, Cowhey and Aronson 2008).

In emerging markets, the presence of natural persons is particularly important in the computer services industry due to prevailing shortages of skilled labour. As a consequence of these shortages, cross-border trade in computer services has become increasingly important, too, as employers seek to alleviate labour shortages by cross-border relationships with foreign computer services suppliers. However, while cross-border trade in computer services is very liberalised, commitments in mode 4 are low with most restrictions (WTO Secretariat 2000, Primo Braga 1996).

4.5 Overall Adequacy of the GATS for Cross-Border Value Added Chains

Generally, the GATS faces several constraints in trade liberalisation in services, mainly due to its multilateral nature. Several services sectors are still being negotiated, the different schedules of the member states differ greatly, and definitions in the commitments are often outdated as the market evolves more quickly than negotiations progress. Furthermore, trade liberalisation in services is a very sensitive issue on the multilateral level, as services are directly linked to labour migration and technological development. Unlike the GATT, the GATS to date still lacks an adequate safeguard mechanisms for industrialised countries to protect their labour markets against a sudden influx of mode 4 workers, but also for emerging markets to keep out more advanced foreign services firms in telecommunications, banking in order to protect their infant industries (Sauvé 2008:617-620).

A further challenge to non-diversified small and vulnerable economies, which happen to be mostly developing and least developed countries, is the fact that without compensation in another sector or mode of supply (Art. XXI GATS), commitments cannot be modified. This fact may also dis-incentivise industrialised countries from offering access to their labour markets more broadly to foreign service providers (Panizzon 2010a:28). Another key shortcoming is the GATS scheduling structure of commitments. The latter is inadequately tailored for shifting any regulatory burden – such as quality control – upon the government of a labour sending country or the country benefiting from market access for its ISS services. Neither is it possible to obtain a guarantee from any government that the physical person sent abroad will not overstay, but return in a timely and orderly fashion in full respect of the host country's labour and immigration law.

However, a WTO Member can require, as a qualification to national treatment (Art. XII), that the service provider, a physical person or a firm should respect minimum wage and other local labour laws, should employ a minimum of domestic workers, and should offer training possibilities to these, such as by setting up intra-corporate subsidiary to headquarter transfers programmes). Therefore, the extent to which WTO Members have granted market access at the multilateral level is relatively modest, especially when measured against the great potential for economic growth – especially for emerging markets – that is expected from trade liberalisation in services.

In the particular case of trade liberalisation in the services sectors relevant for cross-border value added chains, the shortfalls of the GATS are the following:

> **General:** As the different schedules differ greatly, it is difficult for an entrepreneur to understand his/her legal rights and duties when establishing a cross-border value added chain. Furthermore, in most cases, the degree of liberalisation is relatively modest, which means that it is yet insufficient for many needs of cross-border production networks (cf. Whalley 2003:3-4).
>
> **Transportation:** Market access in the transportation sector is particularly restricted due to state-owned railway-companies, non-existent liberalisation in the air transportation sector, and little and particularly multi-levelled – and therefore complicated – liberalisation in road transportation. Only the maritime transportation sector seems to meet the needs of cross-border entrepreneurial networks. Two kinds of transportation can be distinguished in a cross-border value added chain: transports of finished goods to the consumer and transports of semi-finished goods from one location of value addition to the

next. In most cases, the latter will be much more important, although this depends on the length and scope of each individual value added chain. There are no particular regulations concerning such transportation of semi-finished goods as part of a cross-border value added chain.

Telecommunication: Telecommunication services are at the heart of cross-border value added chains. This is because without communication the processing of a product in different regions at different stages would be unthinkable and unmanageable. The main problem in this sector is the lack of adequate definitions of the specific telecommunication services, without general liberalisation. Furthermore, particularly emerging markets seem reluctant to liberalise their telecommunication sectors under the GATS. While the market is fairly open to mode 1 market access, the underdevelopment of infrastructure in emerging markets tends to act as an almost insurmountable de-facto market entry barrier. In view of this reality, only competitive pressures in mode 3 commercial presence could make a real difference for cross-border entrepreneurial networks. In the longer run, improving the quality and reliability of infrastructure could potentially have a similar effect.

Financial Services: For cross-border value added chains, particularly mode 1 supply is relevant. However, there is only little liberalisation in mode 1 under the GATS.

Professional Services: Here, the GATS already provides a good starting point for further liberalisation. Main difficulty in this sector is, however, that negotiations are still ongoing, with open ending and leaving quite some legal uncertainty in the meantime. Interestingly, emerging markets tend to be more reluctant in opening their professional services sectors, than industrialised countries. Thus, particularly in the case of cross-border value added chains in emerging markets, there's still a great potential to be tapped.

Labour Migration / Mode 4: For the creation and development of cross-border value added chains that are based on the international networks of entrepreneurs, labour migration is a key to success. This is because taking advantage of the cross-border networks requires the possibility to work with the best people with the most appropriate skills at the right place in the process of the value added chain. These networks tend to consist of highly educated people, which often provide their know-how under consultancy rather than employment contracts. Thus, they often fall into the services providers group, despite having to move to the place of production.

Restrictions in mode 4, thus, may hamper the creation of cross-border value added chains, or even render such business ideas impossible to realise. Again, due to its multilateral nature, trade liberalisation in mode 4 is very restricted under the GATS and does not meet the needs of cross-border entrepreneurial networks.

4.6 RTAs and the Potential of Compensating for the Shortfalls of the GATS

Trade liberalisation in services is generally easier to negotiate the larger the expected gains from liberalisation are for both negotiating partners. Moreover, trade liberalisation in services requires less definition and regulation if the negotiating partners have similarly structured services sectors (cf. Agu 2009). Finally, trade liberalisation in services is most promising among countries that share a similar culture, language, and level of development (cf. Sturgeon 2000:3). Thus, it is worthwhile to consider RTAs as a way of compensating the shortfalls of the GATS with respect to stimulating the creation of cross-border value added chains.

Beside the opportunity to fully open the services market through RTAs, and therewith compensate for the shortfalls of the GATS, RTAs could also provide a vehicle to negotiate specific conditions for the creation of cross-border value added chains. Supporting and promoting value added chains in such a way has the potential of fostering economic growth in the entire region participating in the RTA. This could be expected to alleviate distributional issues in negotiations. Thus, even if the complete liberalisation of trade in services remains non-negotiable, providing the required access to services for cross-border entrepreneurs might still be worthwhile for both negotiating partners.

RTAs with their propensity to being closer to shared (business) culture, educational and professional curricula and language have an advantage over GATS particularly where sectors and modes of supply are concerned, as these require harmonised quality standards or mutual recognition of qualification. Furthermore, RTAs are better equipped than GATS when it comes to ‘promoting the effectiveness of regulatory agencies, including assistance provided by developed countries’ (UNCTAD 2010b:15). As regards ISS, transnational regulatory cooperation and institution-building are essential, particularly when provided via modes 1 and 3. This holds especially true for finance, but also for preventing brain waste by ensuring that a non-national gets accredited to deliver services in another country at his/her level of qualifications,. As UNCTAD (2010b:15) suggested, such exchanges are better done at a regional level and South-South twinning or exchange programmes could prove particularly helpful, but peer reviews among regulators within the same region could also serve to improve the quality and capacity of national regulation.

However, RTAs may not always be the best vehicle for trade liberalisation in services with respect to cross-border value added chains. A distinction might be made between service sectors with regional and international supply structures. For example, air transportation services are almost by definition global, and possibly, liberalisation is generally more sustainable at the multilateral level. In contrast, rail transportation might recommend itself for regional liberalisation. Also, with every preferential free trade agreement, MFN and other restrictions under the GATS have to be considered, in order not to violate WTO law.

5. The Temporary Movement of Natural Persons under GATS Mode 4 and FTAs and Transnational Value-Added Chains

Facilitated and liberalised flows of labour movement are an essential pre-condition for transnational entrepreneurship and value-added chains to emerge. Beyond remittances transfers, the employment, studies or entrepreneurial activity abroad or a combination of these factors, has also 'indirect trade-inducing effects' for the country of origin (WTO Secretariat 2009:15)[13]. Thus, the temporary movement of natural persons holds more directly than liberalised trade in ISS a 'development dividend' for emerging markets.

As noted, the level of GATS mode 4 commitments is shallow. While most developing and least developed countries are *de facto* excluded from mutual recognition agreements, to the effect that even if labour markets were open to their nationals, these persons would either fail to be admitted or would have to content themselves with occupations below their skill levels (brain waste) (Chanda 2004:12-14). Whereas industrialised countries have liberalised market access in the categories of highly-skilled workers, the GATS lacks the guarantees that such temporary movement becomes permanent migration, which is a particular risk for what is commonly called 'expatriates'. None of the industrialised countries' schedule of GATS commitments contains anything close to a return obligation, which the company employing a non-national would have to enforce.

In this sense, the recently concluded EPA between Japan and the Philippines breaks new ground for all trade agreements as it is considered to be the first one to call on the

[13] The WTO Secretariat notes the example of how the „presence of temporary Indian workers in the US has helped raise the awareness of the pool of skills available within India, thus increasing US companies' inclination to deal with Indian workers and facilitating the eventual outsourcing of work to India' (p. 15).

Filipino government (not companies) to ensure the timely and orderly return of the nurses and caregivers employed by Japanese health care facilities in Japan. Article 11 of the Implementing Agreement to the JPEPA lays down a mandatory regulatory obligation addressing the government of the Philippines to set up rules and regulations, including on the issuance of travel documents for ensuring immediate return to the Philippines of nurses and caregivers, who are required to leave Japan under Japanese immigration laws and regulations. Interestingly, this regulatory source country mandate to ensure timely and orderly return is limited to nurses and caregivers and does not exist for the other categories of service providing Filipino nationals (Panizzon 2010b:22).

While emerging markets rely on human capital transfers by their expatriates abroad, the structure of the GATS does little to mobilise brain circulation. Moreover, it does not prescribe, for instance, multilateral adherence to an international ethical code of recruitment, which would prevent brain drain in the first place, nor do any of the WTO Members' schedules of commitments require such guarantees.

In addition, for GATS both the at-the-border-barriers (AtB) and the behind-the-border-barriers (BtB) are considerable. In the case of the first, the immigration law *caveat* of the Annex on the Temporary Movement of Natural Person (Annex MONP), which forms part of the GATS excludes from the scope of GATS and thus from disciplines such as transparency (Art. III), MFN (Art. I), domestic regulation (Art. IV) all immigration law barriers. This may include visa requirements, visa procedures, border securitisation programmes etc, unless, in the case of the visa requirements only, the prescriptions are so burdensome that the value of a GATS commitment is nullified or impaired (footnote 13 to Annex MONP). In addition, most WTO Members limit market access by operating extensive authorisation requirements for admission to work, economic need tests, pre-employment requirements and quotas in their Schedules. These AtBs are, thus, narrowing down sensibly the GATS as a tool for facilitating circular, short-term labour migration in services.

Despite paragraph 3 of the Annex MONP encouraging WTO Members to offer commitments across the entire spectrum of occupations and skill categories, most WTO Members have kept their openings to the highly skilled or, if not formally trained, to persons equipped with special talents. Together with the fact that persons seeking access to the employment market of another WTO Member fall outside the scope of GATS (as per paragraph 2 of the Annex MONP), the high-skill bias of GATS fails to provide for the emergence of entrepreneurial networks among lower-skilled migrants. This is a waste in economic potential as shows the well-documented example of seasonal workers from Ghana, who established ties between their employers in Northern Italy with pineapple farmers in Ghana, eventually leading to the establishment of Ghanacoop, a blossoming import firm for pineapples to Italy (IOM Geneva, The MIDA Experience and Beyond 2009).

Among service provider categories, the one of graduate trainees holds the most potential for promoting transnational expatriate networks, brain circulation and cross-border value added chains to emerge. WTO Members tend to be politically ready to liberalise the movement of the more highly skilled service providers within the WTOs multilateral trading regime. Yet, the fact that but few WTO Members have in fact liberalised in the categories of graduate trainees sensibly diminishes the potential that GATS could play as a tool to foster such networks.

The element of ‘exchange’ inherent in the notion of a trainee refers to a reciprocal learning experience, implying that such persons not only supply (usually education), but also consume services (training). Graduate trainees thus combine elements of a mode 4-type movement with a mode 2-type service supply. Under the narrow definition of Art. 1:2 GATS, graduate trainees cannot be considered fully-fledged service suppliers because they often work only part-time and receive training during the rest of their time. Consequently, they cannot be considered ‘like’ other service supplying natural persons, working full-time and without an educational/training link (Nielson and Cattaneo 2003:139). Instead, they constitute a category of service providers of their own and could be labelled ‘quasi’-service supplying natural persons. Because graduate trainees, do not fall entirely under the definition of service suppliers of Art. I:2(d) GATS their temporary movement abroad should not only be liberalised in GATS mode 4 and its replicas, such as free trade and economic partnership agreements, but also in bilateral, non-trade agreements, such as special ‘stagiaire or traineeship exchange’ agreements.

Among the different service supplier categories, which WTO Members are using, those categories of workers most likely to make a long-term physical or virtual return to their home country, are graduate trainees, followed by contractual service suppliers, CSS. As regards shorter-term financial returns to their country of origin, CSS top the list: Firstly, being ‘borrowed’ to a foreign firm abroad, their tax base remains their country of origin. Secondly, being sent abroad, but remaining employed and remunerated by their employer and under jurisdiction of their source country (Mamdouh 2008), the likelihood of their return home is higher than for other service providers.

In this context, the term ‘body shopping’ has come up (Biao 2008). Indian IT workers usually use this model for dispatching IT experts to European or US-American firm. Business sellers, which move abroad to set up a commercial presence or to negotiate a services contract with a would-be host country services consumer, are also likely to return back home, because like CSS, they do not receive remuneration from a source based in the host country (Carzaniga 2003:22-24). Unlike CSS, they return home without much added-value for their home country, since business sellers are even less exposed than CSS to the host country working environment, given that they do not provide a service. Also, their remittances transfers remain low nor will they be sufficiently long abroad to establish expatriate networks.

With independent professionals, the situation is somewhat different, since they are most likely to stay for a longer time abroad, remit less and, if they have a booming business in the country of destination without joint-ventures or otherwise de-linked from their home country they are less likely to re-engage with their home community.

Unlike these three categories, graduate trainees are at high risk of staying on in their country of destination, especially if the host country legislation provides for a ‘first professional experience abroad’ admission card or permit of stay, such as France under its bilateral pacts on concerted migration management (Decree of 26 August 2009) or Switzerland under Art. 30 of the Federal Law on Foreigners of 1 January 2008. Graduate trainees offer the ideal combination of young and skilled workers with optimal integration capacity in the host country, all while being less likely to raise family reunification challenges, which usually complicate the admission procedures. Consequently, graduate trainees are becoming a much sought after category of foreigners by industrialised countries competing against each other in the ‘global hunt for talent’

(Kapur et al. 2005). For instance, France, beyond foreseeing a special admission card for graduate trainees under Article L313-7-1 of its new immigration law of 24 July 2006, operates special bilateral agreements on young professionals (e.g. with Senegal which offers to put enterprises and employers in France in touch with young professionals seeking work in France).

The paradox is that graduate trainees not only are the most sought-after category of foreign employment by host country firms, but they offer the highest potential in terms of developmental gains to their home country compared to other service provider categories. This is because, in addition to supplying a service abroad (mode 4), graduate trainees have also consumed (mode 2) services abroad and thus have aggrandised their skill base and know how abroad, which they can transfer either by physical or virtual return back home.

The crucial policy issue then becomes the one of designing the most optimal return scheme for graduate trainees: which are the factors incentivising graduate trainees to re-engage with their home country, either virtually through investments-at-a-distance or by returning to home physically. Past experience has shown that institutional, destination-country-led initiatives, such as France's training-for-return programmes embedded in bilateral agreements on vocational and professional training for Senegalese and Algerian migrants wishing to return to a job in Senegal or Algeria[14], failed to produce the desired effect, because there was no concrete employment opportunity lined up for these workers back in their home country. France undertook a new effort to

[14] Agreement on training for workers who have temporarily emigrated to France with a view to their return to Senegal and their integration into the Senegalese economy, signed at Dakar on 1 December 1980, came into force on 1 August 1982, UNTS Volume 1306, I-21788. In 1980, France and Senegal had already concluded an agreement on what today would be called 'voluntary return' (Agreement on training for workers who have temporarily emigrated to France with a view to their return to Senegal and their integration into the Senegalese economy). It provided for French government support to the professional development of Senegalese in France to prepare them for their return to Senegal.

encourage foreign students to return back home, by establishing, for instance in Dakar, a Centre for Studying in France, which operates a website that will inform Senegalese students in France about job offers in Senegal.

Initiatives such as this one, are less motivated by a concern to contribute to source country human capital development and reversing the brain drain, but rather to prevent foreign students from overstaying their visas and remaining in unlawful stay often coupled with an unauthorised employment in France (Decree of 26 August 2009). The mixed success and duplicity of political motivations associated with host country government initiatives highlights once more the original argument of this paper, which is that for networks to emerge, it is essential that suitable infrastructure and career opportunities are available to expatriates in their home countries (WTO 2009:15).

As mentioned, only but few members have liberalised the temporary movement of graduate trainees in their GATS schedules of commitments. With the Hong Kong Declaration of 18 December 2005 stressing that ‘in the services negotiations, Members shall give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under mode 4’ and the Services Signalling Conference of 26 July 2008 expressing the ‘readiness to improve access conditions for mode 4’, which according to Lamy are ‘expressly linked to the development character of this Round’ (WTO 2008:8), it seems like the mode 4 agenda could be moving forward in the negotiations. For the time being, it is in free trade agreements and economic partnership agreements that most advances for liberalising the temporary movement of graduate trainees were made.

For instance, in the EC-CARIFORUM EPA, where the EU liberalised 29 sectors for Caribbean CSS and 11 sectors for temporary entry by Cariforum independent professionals or self employed persons, which is incidentally the widest commitment the EU has ever made in mode 4-type categories of non-nationals (ITUC Analytical Note: 2008). Furthermore, the opening the EU has granted to graduate trainees in the EC-CARIFORUM EPA corresponds to the one in the EC-27 Doha offer, but expands on the 'direction' of movement. Precisely regarding the aspect of the direction of movement is the key factor for stimulating entrepreneurial networks and know-ledge transfer back home. The EPA widens the scale of movement open to a graduate trainee from a CARIFORUM country, to that from a company's subsidiary, usually in a CARIFORUM country to the firm's headquarters (in Europe)[15]. This additional type of movement is the only one offering skill-upgrading possibilities to graduate trainees from CARIFORUM countries. The definition used implies that a domestic employer domiciled in the EU will recruit graduate trainees from the CARIFORUM countries, as opposed to a foreign firm, and is likely to fall outside the scope of GATS. Consequently, the EC is under no obligation to generalise this opening preferentially granted only to CARIFORUM countries, to all WTO Members on the basis of the MFN clause of GATS (Sauvé and Ward 2009:17-19).

Graduate trainees, students or professional exchanges or stagiaire programmes were a traditional domain of the first-generation bilateral migration agreements, concluded in the context of capacity-building and technical transfer with developing countries. Dating back to the 1950s when colonies gained independence from their motherlands, their rationale was to compensate for free circulation of persons lost to agreements introducing visa and work permit requirements towards the former colonies. In the

[15] Art. 80 para. 2 lit. b CARIFORUM–EC EPA.

ongoing Doha Round of negotiations, the EC-27 has made in ‘nearly all sectors’, ‘a significant offer on graduate trainees who can move as intra-corporate transferees on management training programmes’.

The EC-27 offer responds to the critique voiced by least-developed countries specifically, that industrialised countries have failed to offer commitments that are ‘meaningful’ to LDCs (WTO Hong Kong Declaration, 2005). Thus, it explicitly advertises its offer as a ‘development tool’, which ‘can be used to provide for technology or know-how transfer for newly qualified managers in LDCs’ (WTO 2005:2). In return, the EC pointed out that LDCs would need to make commitments in a ‘list of sectors focused on key infrastructure services, which can make an important contribution to development’ (WTO 2005:4).

As Rsyzard Cholewinksi has said ‘labour migration lies at the heart of migration management today’ (Cholewinski 2008:286). While labour migration can ‘accelerate’ development in migrant source countries, it has the paradoxical effect, when left unregulated, to deplete the human resources of migrant source countries (Martin and Abella 2009). Numerous case studies have shown how labour recruitment policies of host countries and via mode 4 of GATS, have put at risk the supply and quality of essential services in vital sectors of education and health in source countries. Inconsistent trade liberalisation, migration and development policies can set source countries back economically and financially, since importing foreign workers to do the job is costly and tax revenue lost can only partially be compensated by remittances transfers. Today Africa only has 20’000 scientists and engineers in population totalling 600 million (Terrot 2009:12). Sub-Saharan Africa is most affected by the migration of skilled workers, with over 20% of the tertiary-educated population living in OECD countries and in some small countries the outflow reaching up to 80% (OECD 2006). For these reasons, liberalisation of trade in services strikes a win-win-win solution, whereby both migrant networks are fostered just as transfers of knowledge and entrepreneurship are stimulated.

6. A Legal Framework for Cross-border Networks: The Case of Jordan

According to the previously elaborated preconditions for the creation and advancing of cross-border value added chains, the legal framework ought to have the following characteristics:

- Trade in services should be liberalised with neighbouring countries or easily accessible regions, particularly in the services sectors of telecommunication, transportation, finance, and professional services.
- With the same trading partners, trade in semi-finished goods should be freed from any kind of transaction costs.
- For the establishment of a market for the value added product, the trading partners should also have bilateral or multilateral trade agreements in goods with Western countries.
- Finally, the trading partners should include labour migration regulations in the trade agreement and pursue a liberal practice in mode 4 supply. Particular weight should be put on labour migration of graduate trainees, students and professional exchanges.

We neither did have the time nor the means to conduct an in-depth analysis of the current legal framework in emerging markets. However, as a case of illustration, we would like to draw the attention to certain particular aspects of the legal framework of Jordan. However, due to unexpected time constraints, this case-study will be presented at the conference and added to the paper later. The following few paragraphs are only meant to provide for a first impression of the idea.

Jordan has consistently pursued liberal economic policies over the past thirty years. Alongside liberalisation within the country, Jordan has negotiated more than 45 bilateral trade agreements and several Free Trade Agreements (FTA), as well as it has become member of the WTO. Thus, Jordan’s economy is both internally, regionally and internationally well positioned for the creation and stimulation of cross-border value added chains.

Most of Jordan’s bilateral trade agreements are non-preferential, aiming at discussing further ways to enhance economic cooperation. Therefore, they are not of any further interest in this context. However, Jordan’s FTAs (within the region, with the European Union, with the U.S., with Canada, and with Turkey) are relevant in the case of cross-border value added chains and will be discussed here (cf. Jordanian Ministry of Industry and Trade).

6.1 Economic Integration in the Arab World

Scholars seem more or less to univocally agree that economic integration in the Arab world is generally low, hampered mainly by weak implementation of international trade agreements. Particularly interesting is, therefore, a survey on cross-border trade in the Arab world conducted with representative numbers of cross-border entrepreneurs. Asked, whether or not the obstacles to cross-border trade have decreased in the past few years, they agreed that particularly in Egypt and Jordan the situation is better now (Zarrouk 2003:54). As for the international trade agreements, GAFTA was mentioned as the most beneficial, followed by the WTO agreements.

However, half of the respondents have not benefited from any trade agreement signed by their government. Among others, the reasons of not benefiting from trade agreements are a lack of implementation and the fact that the agreements did not reduce the administrative procedures and paperwork. Furthermore, cross-border entrepreneurs in the Arab World mentioned inadequate transportation as a major hindrance to cross-border trade (Zarrouk 2003:57-8). Thus, trading costs could be effectively reduced through regional free trade agreements that eliminate redundant procedures and cross-border transportation restrictions (Zarrouk 2003:58).

6.2 Regional Trade Liberalisation in Services and Semi-Finished Goods

The GAFTA would be most beneficial to cross-border value added chains, as it exempts semi-finished goods from customs duties and other taxes (Art. VI 3), and grants special concession for services associated with trade among the partners (Art. II 2, 4). However, it is well known that the GAFTA is badly implemented, and, thus, its effect on trade is small.

In the attempt to push forward the stalled GAFTA, Jordan, Egypt, Morocco and Tunisia signed the AGADIR agreement. Even though the AGADIR agreement is not stating any further commitments than the GATS so far, it is aiming particularly at trade liberalisation in services. So far, trade liberalisation in services among the member states of AGADIR has, however, not been much affected (Momani 2007:8-9). This might also be the consequence of the fact that AGADIR does not exceed the level of liberalisation already committed in the GATS (Art. 5).

Jordan is, however, aware of the need for regional economic integration, particularly in the services sector. This can be seen in various paragraphs in bilateral trade agreements in the region (stating the intention to open the services market), and in the official statements of trade policy. E.g.:

> […] it should be noted that the private sector stresses the need to develop a program to facilitate trade and improve logistic services, transport and ports, as well as facilitating the granting of visas for businessmen in Agadir countries. This is an important factor in encouraging cooperation among member states in the fields of transport and provision in order to reduce shipping cost and promote professional cooperation in the sector in [the] Agadir area (Quattous and McCallin 2009:142).

Furthermore, it is interesting to note that Jordan has a number of joint transportation companies with Syria and other Arab countries. These companies provide road transportation for all kinds of goods among Jordan, Syria and Lebanon, sea transportation of goods between Syria and Western Europe, and maritime transportation of passengers, goods and vehicles between Arab countries and Africa and Asia (Jordanian Ministry of Transport).

Jordan has recently signed a partnership agreement with Turkey to set up a joint free trade zone. The agreement is facilitating travel and trade between the two countries through customs cooperation and the cancellation of visa fees. Furthermore, it should particularly allow for Turkish and Jordanian businessmen to establish new business ventures and join investments (Jordan Times 02 Dec 2009[16]).

[16] Available at:
http://www.zawya.com/Story.cfm/sidZAWYA20091202072252/Jordan,%20Turkey%20sign%20FTA/

6.3 Market Access in Developed Countries

The recently negotiated FTA with Singapore is generally adhering to the commitments of the GATS. However, it does extend liberalisation in trade in services to the mutual recognition of certificates, and provides for an option of further liberalisation in the telecommunications sector. Furthermore, it creates a framework for financial services between Jordan and Singapore, and encourages transportation firms to cooperate (Chapter 4). The FTAs with the EU, US and Canada, will be described.

6.4 Liberal Migration Regulations

7. Conclusion

Starting from the recent literature that identifies potential for economic development for emerging markets in cross-border value added chains, based on the networks of expatriates, this paper has analysed the legal framework for cross-border business ventures in the developing world. Four key ISS sectors, telecommunication, transport, professional and financial services are identified as catalysts for cross-border value added chains. Liberalisation in these four key sectors on a regional level, therewith going beyond the current level of liberalisation of the GATS, is argued to provide for a more conducive and welcoming environment for cross-border entrepreneurs and helping to prevent brain drain. Furthermore, liberal labour migration policies, including mode 4 supply are the necessary pre-condition for expatriate cross-border networks to emerge, both among highly-skilled professionals and non-formally trained migrant workers. We find that while host country governments have experimented with various forms of stimulating expatriate investment and entrepreneurship involving their countries of origin, notably through tax incentives, co-funding, capacity-building in the context of unilateral immigration and development policies or bilateral non-trade, migration agreements, these incentives, which are mostly managed by the executive branch of host country government are inherently limited by domestic worker coalitions, which may be negatively pre-disposed to government-funded promotion of expatriate entrepreneurship. For these political economic constraints, we find that services trade liberalization in ISS, but also for labor migration is the more optimal avenue to mobilize migrants' transnational business activities, which may occur in either of the three modes or a mix of these: thru entrepreneurship by physical return into their country of origin, investment-at-distance into host-country government co-sponsored infrastructure, entrepreneurship or other development projects or into privately established projects and finally through the migrant acting as catalyst or broker of joint ventures between a host country and source country firm.

We come to the conclusion that the current global legal framework is inappropriate for the stimulation of cross-border value added chains in the developing world, particularly in the case of trade in services including the mode 4 of service supply through the temporary movement of natural persons abroad and liberal labour migration policies more generally. Thus, we suggest to adapt the legal framework on a regional level to the needs of cross-border entrepreneurs, and to address the issue of labour migration in bilateral and regional trade agreements, particularly with Western economies. Finally, global trade liberalisation in services, including in mode 4 supply, would support emerging markets to a large extent in tapping the potential lying in their expatriate networks.

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